

IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

APPEAL FROM ORDER NO. 29 OF 2003

Shri Devidas Painguincar,
major, agriculturist, resident
of Badegal, Cotigao, Poinguinim,
Canacona-Goa.

.... Appellant

Versus

Smt. Rekha Babu Naik,
wife of Babu Naik, major in age,
housewife, resident of House No. 1164,
Badegal, Cotigao, Canacona-Goa.

.... Respondent

Shri V.R. Tamba, Advocate for the Appellant.

Shri M.P. Almeida, Advocate for the Respondent – absent.

CORAM : **P.V. KAKADE, J.**

DATE : **24th NOVEMBER, 2006**

ORAL JUDGMENT :

Heard the learned Counsel for the appellant. None appears for the respondent, though served.

2. This is an appeal against the order passed by the Comarca Judge of Salcete and Quepem at Margao dated 6/01/2003, deciding the third party application in decided Inventory Proceeding No. 12/99/C and

directing that the inquiry should be conducted as the ownership of the property is in dispute.

3. The Civil Miscellaneous Application No. 16 of 2000 came to be filed before the lower Court in decided Inventory Proceeding No. 12/99/C wherein, third party alleged that there was fraud committed by the inventariante that the property which was subject matter of the inventario belonged to the inventariante. It was further alleged by the third party that no document was produced to prove the title of ownership in favour of the inventariante nor possession was with the inventario and it was also alleged that third party was in possession of the property.

4. The lower Court, after hearing the party came to the conclusion that when the fraud was alleged, inquiry was required and, hence, inquiry came to be directed.

Hence, the present appeal against the said order.

5. In the course of arguments, my attention is invited by the learned Counsel for the appellant to the provisions of Article 1427 and Article 1436 of the Family Laws, by which virtue, it is quite apparent that

the judgment and decree passed in the Inventory Proceeding has attained finality and the remedy of the third party lies elsewhere in independent proceedings and not by way of Civil Miscellaneous Application in the decided Inventory Proceeding. I agree with this submission and hold that the application of third party in the decided Inventory Proceeding cannot be entertained, so as to re-open Inventory Proceeding, in this manner. Under the circumstances, this impugned order passed by the lower Court is set aside and the Civil Miscellaneous Application No. 16 of 2000 filed in Inventory Proceeding No. 12 of 1999 is hereby dismissed. With these directions, the appeal is allowed with no order as to costs.

P.V. KAKADE, J.

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